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## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R08-OAR-2011-0724; FRL-9812-9]**

#### **Promulgation of State Implementation Plan Revisions; Infrastructure Requirements for the 1997 and 2006 PM<sub>2.5</sub> National Ambient Air Quality Standards; Montana**

**AGENCY:** Environmental Protection Agency (EPA)

**ACTION:** Proposed rule

**SUMMARY:** EPA is proposing to partially approve and partially disapprove the State Implementation Plan (SIP) submission from the State of Montana to demonstrate that the SIP meets the infrastructure requirements for the 1997 and 2006 National Ambient Air Quality Standards (NAAQS) for particulate matter less than or equal to 2.5 micrometers ( $\mu\text{m}$ ) in diameter (PM<sub>2.5</sub>). The Clean Air Act (CAA) requires that each state, after a new or revised NAAQS is promulgated, review their SIP to ensure that they meet infrastructure requirements. The State of Montana submitted a certification of their infrastructure SIP for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, dated February 10, 2010. EPA does not propose to act in this notice on the State's submissions to meet requirements relating to interstate transport of air pollution for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. EPA will act on those submissions in a separate action.

**DATES:** Written comments must be received on or before **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R08-OAR-2011-0724, by one of the following methods:

- <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.
- E-mail: [ayala.kathy@epa.gov](mailto:ayala.kathy@epa.gov)
- Fax: (303) 312-6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- Mail: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129.
- Hand Delivery: Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129. Such deliveries are only accepted Monday through Friday, 8:00 a.m. to 4:30 p.m., excluding federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-R08-OAR-2011-0724.

EPA's policy is that all comments received will be included in the public docket without change and may be made available online at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or e-mail. The [www.regulations.gov](http://www.regulations.gov) web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA, without going through [www.regulations.gov](http://www.regulations.gov) your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you

submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>. For additional instructions on submitting comments, go to section I, General Information, of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the [www.regulations.gov](http://www.regulations.gov) index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202-1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathy Ayala, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P-AR, 1595 Wynkoop Street, Denver, Colorado 80202-1129, (303) 312-6142, [ayala.kathy@epa.gov](mailto:ayala.kathy@epa.gov).

**SUPPLEMENTARY INFORMATION:****Definitions**

For the purpose of this document, we are giving meaning to certain words or initials as follows:

- (i) The words or initials Act or CAA mean or refer to the Clean Air Act, unless the context indicates otherwise.
- (ii) The initials AIRS mean or refer to national air quality database.
- (iii) The initials ARM mean or refer to Administrative Rules of Montana.
- (iv) The initials BACT mean or refer to best available control technology.
- (v) The initials BER mean or refer to Board of Environmental Review.
- (vi) The initials CBI mean or refer to confidential business information.
- (vii) The words or initials Department or DEQ mean or refer to the Department of Environmental Quality.
- (viii) The words EPA, we, us or our mean or refer to the United States Environmental Protection Agency.
- (ix) The initials EEAP mean or refer to Emergency Episode Avoidance Plan.
- (x) The initials FIP mean or refer to a Federal Implementation Plan.
- (xi) The initials GHG mean or refer to greenhouse gases.
- (xii) The initials QAPPs mean or refer to Quality Assurance Project Plans.
- (xiii) The initials QA/QC mean or refer to quality assurance/quality control.
- (xiv) The initials LAER mean or refer to lowest achievable emission rate.
- (xv) The initials MCA mean or refer to Montana Code Annotated.
- (xvi) The initials MT CAA mean or refer to the Clean Air Act of Montana.

- (xvii) The initials NAAQS mean or refer to national ambient air quality standards.
- (xviii) The initials NO<sub>x</sub> mean or refer to nitrogen oxides.
- (xix) The initials NPRM mean or refer to notice of proposed rulemaking.
- (xx) The initials NSR mean or refer to new source review.
- (xxi) The initials PM mean or refer to particulate matter.
- (xxii) The initials PM<sub>2.5</sub> mean or refer to particulate matter with an aerodynamic diameter of less than 2.5 micrometers (fine particulate matter).
- (xxiii) The initials ppm mean or refer to parts per million.
- (xxiv) The initials PSD mean or refer to Prevention of Significant Deterioration.
- (xxv) The initials SIP mean or refer to State Implementation Plan.
- (xxvi) The initials SOP mean or refer to Standard Operating Procedures.
- (xxvii) The initials SSM mean or refer to start-up, shutdown, or malfunction.

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## **I. General Information**

What should I consider as I prepare my comments for EPA?

1. Submitting Confidential Business Information (CBI). Do not submit CBI to EPA through <http://www.regulations.gov> or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.
2. Tips for preparing your comments. When submitting comments, remember to:
  - Identify the rulemaking by docket number and other identifying information (subject heading, Federal Register, date, and page number);
  - Follow directions and organize your comments;
  - Explain why you agree or disagree;
  - Suggest alternatives and substitute language for your requested changes;
  - Describe any assumptions and provide any technical information and/or data that you used;
  - If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced;
  - Provide specific examples to illustrate your concerns, and suggest alternatives;
  - Explain your views as clearly as possible, avoiding the use of profanity or personal threats; and,

Make sure to submit your comments by the comment period deadline identified.

## **II. Background**

On July 18, 1997, EPA promulgated new NAAQS for PM<sub>2.5</sub>. Two new PM<sub>2.5</sub> standards were added, set at 15 µg/m<sup>3</sup>, based on the 3-year average of annual arithmetic mean PM<sub>2.5</sub> concentration from single or multiple community-oriented monitors, and 65 µg/m<sup>3</sup>, based on the 3-year average of the 98<sup>th</sup> percentile of 24-hour PM<sub>2.5</sub> concentrations at each population-oriented monitor within an area. In addition, the 24-hour PM<sub>10</sub> standard was revised to be based on the 99<sup>th</sup> percentile of 24-hour PM<sub>10</sub> concentration at each monitor within an area (62 FR 38652).

On October 17, 2006 EPA promulgated a new NAAQS for PM<sub>2.5</sub>, revising the level of the 24-hour PM<sub>2.5</sub> standard to 35 µg/m<sup>3</sup> and retaining the level of the annual PM<sub>2.5</sub> standard at 15 µg/m<sup>3</sup>. EPA also retained the 24-hour PM<sub>10</sub> and revoked the annual PM<sub>10</sub> standard (71 FR 61144). By statute, SIPs meeting the requirements of sections 110(a)(1) and (2) are to be submitted by states within three years after promulgation of a new or revised standard. Section 110(a)(2) provides basic requirements for SIPs, including emissions inventories, monitoring, and modeling, to assure attainment and maintenance of the standards. These requirements are set out in several “infrastructure elements,” listed in section 110(a)(2).

Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, and the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state’s existing SIP already contains.

### **III. What is the Scope of this Rulemaking?**

This rulemaking will not cover four substantive issues that are not integral to acting on a state's infrastructure SIP submission: (i) existing provisions related to excess emissions during periods of start-up, shutdown, or malfunction at sources, that may be contrary to the CAA and EPA's policies addressing such excess emissions ("SSM"); (ii) existing provisions related to "director's variance" or "director's discretion" that purport to permit revisions to SIP approved emissions limits with limited public process or without requiring further approval by EPA, that may be contrary to the CAA ("director's discretion"); (iii) existing provisions for minor source NSR programs that may be inconsistent with the requirements of the CAA and EPA's regulations that pertain to such programs ("minor source NSR"); and, (iv) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's "Final NSR Improvement Rule," 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) ("NSR Reform"). Instead, EPA has indicated that it has other authority to address any such existing SIP defects in other rulemakings, as appropriate. A detailed rationale for why these four substantive issues are not part of the scope of infrastructure SIP rulemakings can be found in EPA's July 13, 2011, final rule entitled, "Infrastructure SIP Requirements for the 1997 8-hour Ozone and PM<sub>2.5</sub> National Ambient Air Quality Standards" in the section entitled, "What is the scope of this final rulemaking?" (see 76 FR 41075 at 41076 – 41079).

### **IV. What Infrastructure Elements are Required Under Sections 110(a)(1) and (2)?**

Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements such as modeling,



monitoring, and emissions inventories, which are designed to assure attainment and maintenance of the NAAQS. The elements that are the subject of this action are listed below.

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(E)(i): Adequate resources and authority.
- 110(a)(2)(E)(ii): Compliance with CAA section 128 regarding state boards.
- 110(a)(2)(E)(iii): State responsibility for local government implementation.
- 110(a)(2)(F): Stationary source monitoring and reporting.
- 110(a)(2)(G): Emergency powers.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(J): Consultation with government officials; public notification; and PSD and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

A detailed discussion of each of these elements is contained in the next section.

Element 110(a)(2)(D), Interstate transport of pollutants from Montana, which contribute significantly to nonattainment in, or interfere with maintenance by, any other state will be acted upon in a separate action.

Two elements identified in section 110(a)(2) are not governed by the 3-year submission deadline of section 110(a)(1) and are therefore not addressed in this action. These elements relate to part D of Title I of the CAA, and submissions to satisfy them are not due within 3 years after promulgation of a new or revised NAAQS, but rather are due at the same time nonattainment area plan requirements are due under section 172. The two elements are: (i) section 110(a)(2)(C) to the extent it refers to permit programs (known as “nonattainment new source review (NSR)”), required under part D; and (ii) section 110(a)(2)(I), pertaining to the nonattainment planning requirements of part D. As a result, this action does not address infrastructure elements related to the nonattainment NSR portion of section 110(a)(2)(C) or related to 110(a)(2)(I).

## **V. How Did Montana Address the Infrastructure Elements of Sections 110(a)(1) and (2)?**

1. **Emission limits and other control measures:** Section 110(a)(2)(A) requires SIPs to include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance as may be necessary or appropriate to meet the applicable requirements of this Act.

a. **Montana’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite Lincoln County Health and Environment Regulations approved by the BER on March 23, 2006 and submitted for inclusion into the SIP on June 26, 2006. The Libby control plan was effective in maintaining ambient PM<sub>2.5</sub> concentrations at a level below both the annual and revised 2006 24-hour PM<sub>2.5</sub> NAAQS. On October 8, 2006, EPA

notified the State of Montana that the Libby area was in attainment with the 2006 PM<sub>2.5</sub> NAAQS.

In addition, to control plan implementation for the Libby area, Montana implemented a statewide program for permitting major and minor stationary sources of air pollution, including PM<sub>2.5</sub>. Montana's permitting program(s) require affected sources to demonstrate that source emissions will not cause or contribute to a violation of the NAAQS. Affected sources are further required to utilize BACT and/or LAER, as applicable, for emissions of regulated pollutants.

Montana also regulates major and minor open burning activities and subjects those conducting open burning to BACT requirements.

Except for specific control measures adopted in BER orders, the emission limits and other air pollution control regulations are contained in the following subchapters of Title 17, Chapter 8, ARM: Subchapter 1 – General Provisions (60 FR 36715) ; Subchapter 3 – Emission Standards (44 FR 14036); Subchapter 4 – Stack Heights and Dispersion Techniques (60 FR 36715); Subchapter 6 – Open Burning; Subchapter (60 FR 36715); Subchapter 7 – Permit, Construction and Operation of Air Contaminant Sources (60 FR 36715); Subchapter 8 – Prevention of Significant Deterioration of Air Quality (60 FR 36715); Subchapter 9 – Permit Requirements for Major Stationary Sources or Major Modifications Locating within Nonattainment Areas (60 FR 36715); Subchapter 10 – Preconstruction Permit Requirements for Major Stationary Sources or Major Modifications Locating within Attainment or Unclassified Areas (60 FR 36715); and Subchapter 16 – Emission Control Requirements for Oil and Gas Well Facilities Operating Prior to Issuance of a Montana Air Quality Permit.

b. **EPA analysis:** Montana's SIP meets the requirements of CAA section 110(a)(2)(A) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 1997 and 2006 PM<sub>2.5</sub> NAAQS. In Montana's case, we have approved an attainment plan for Lincoln County, which was designated nonattainment for the annual PM<sub>2.5</sub> standard. Outside of the Lincoln County PM<sub>2.5</sub> attainment plan, Montana regulates emissions of PM<sub>2.5</sub> in two ways: 1) through its SIP approved open burning program; and 2) through its SIP approved major and minor source permitting programs. This suffices to meet the requirements of 110(a)(2)(A) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

Second, in this action, EPA is not proposing to approve or disapprove any existing state rules with regard to director's discretion or variance provisions. A number of states have such provisions that are contrary to the CAA and existing EPA guidance (52 FR 45109, November 24, 1987), and the Agency plans to take action in the future to address such state regulations. In the meantime, EPA encourages any state having a director's discretion or variance provision which is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

Finally, in this action, EPA is also not proposing to approve or disapprove any existing SIP provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. A number of states have SSM provisions which are contrary to the

CAA and existing EPA guidance<sup>1</sup> and the Agency is addressing such state regulations separately (78 FR 12460).

2. **Ambient air quality monitoring/data system:** Section 110(a)(2)(B) requires SIPs to provide for establishment and operation of appropriate devices, methods, systems, and procedures necessary to “(i) monitor, compile, and analyze data on ambient air quality, and (ii) upon request, make such data available to the Administrator.”

a. **Montana’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite a statewide air quality monitoring network operated by the Department, including numerous monitoring activities dedicated specifically to PM<sub>2.5</sub>.

On an annual basis, the Department evaluates trends in industrial and economic development, meteorology, and population growth and makes other scientific, social, and geographic observations regarding areas of the State which may be adversely affected by emissions of air pollutants, including PM<sub>2.5</sub>. The Department, with participation and input by local county air pollution control agencies and other interested parties, makes informed decisions regarding the type, location, and schedules for monitoring various air quality parameters, including PM<sub>2.5</sub>. The product of this decision-making process, the Air Monitoring Network Plan, is made available for public inspection and the Department annually submits the final document to EPA.

All of the Department’s ambient air monitoring operations and resultant data is subject to strict QA/QC processes. The Department employs a variety of QAPPs, and SOPs to maintain

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<sup>1</sup> Steven Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. Memorandum to EPA Air Division Directors, “State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown.” (September 20, 1999).

the highest level of data quality. The Department's air monitoring and data handling QAPPs and SOPs are routinely submitted to EPA for review and approval. The air monitoring data resulting from these rigorous QA/QC processes is uploaded and stored in EPA's AIRS for further review and analysis.

The provisions in State law for the collection and analysis of ambient air quality data is contained in the MT CAA, 75-2-101 et seq., MCA, Powers and Responsibilities of Department.

b. **EPA analysis:** Montana's air monitoring programs and data systems meet the requirements of CAA section 110(a)(2)(B) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. The 2012 Montana Annual Monitoring Network Plan (AMNP), dated July 10, 2012, was approved by EPA Region 8 on April 8, 2013.

3. **Program for enforcement of control measures:** Section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of the measures described in subparagraph (A), and regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that NAAQS are achieved, including a permit program as required in parts C and D.

a. **Montana's response to this requirement:** The State's submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite Montana's administrative rules which authorize enforcement activities sufficient to ensure enforceable emission control measures are implemented to protect the NAAQs.

Congress directed states to develop and implement measures to prevent significant deterioration. Pursuant to ARM 17.8.130 (71 FR 3770), sources subject to the provisions of Title 17, Chapter 8, subchapters 8 (60 FR 36715), 9 (60 FR 36715), and 10 (60 FR 36715), ARM

(regulating construction of new or modified major stationary sources consistent with PSD and NSR requirements) shall be subject to enforcement. The Department is authorized to issue a notice of violation, complaint regarding the source violation, and an order to take corrective action.

The provisions in state law for the enforcement of emission limitations and other control measures, means, or techniques are contained in the MT CAA, 75-2-101 et seq., MCA, and specifically, 75-2-111, MCA, Powers of the Board and 75-2-112, MCA, Powers and Responsibilities of Department.

b. **EPA analysis:** To generally meet the requirements of section 110(a)(2)(C), the State is required to have SIP-approved PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 1997 and 2006 PM<sub>2.5</sub> NAAQS. As explained above, in this action EPA is not evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D of the Act. In this action, EPA is evaluating the State's PSD program as required by part C of the Act, and the State's minor NSR program as required by 110(a)(2)(C).

Montana has a SIP-approved PSD program that generally meets the requirements of part C of the Act. However, in order for the State's SIP approved PSD program to satisfy the requirements of section 110(a)(2)(C) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, the program must meet all requirements of part C of Title I of the Act, including proper regulation of ozone precursors. On November 29, 2005, EPA promulgated the phase 2 implementation rule for the 1997 ozone NAAQS, which includes requirements for PSD programs to treat nitrogen oxides as a precursor for ozone (70 FR 71612). The State's approved PSD program does not satisfy the requirements of the phase 2 implementation rule. Furthermore, the State has not submitted a

revision to the program to address this deficiency.<sup>2</sup> As a result, the SIP does not satisfy, for the 1997 and 2006 PM<sub>2.5</sub> NAAQS, the requirement of element 110(a)(2)(C) for the SIP to include a permit program as required in part C of Title I of the Act. EPA therefore proposes to disapprove the Montana infrastructure SIP for the 1997 and 2006 PM<sub>2.5</sub> NAAQS for this requirement.

Turning to minor NSR, EPA is proposing to approve Montana's infrastructure SIP for the 1997 and 2006 PM<sub>2.5</sub> NAAQS with respect to the general requirement in section 110(a)(2)(C) to include a program in the SIP that regulates the modification and construction of any stationary source as necessary to assure that the NAAQS are achieved, specifically the PM<sub>2.5</sub> NAAQS. (See ARM Chapter 17.8, Subchapter 7.) The SIP approved minor NSR program addresses PM<sub>2.5</sub>, as any facility required to obtain a permit must demonstrate that it will not cause or contribute to a violation of any NAAQS. (See ARM 17.8.749(3).) EPA is not proposing to approve or disapprove the State's existing minor NSR program itself to the extent that it is inconsistent with EPA's regulations governing this program. A number of states may have minor NSR provisions that are contrary to the existing EPA regulations for this program. EPA intends to work with states to reconcile state minor NSR programs with EPA's regulatory provisions for the program. The statutory requirements of section 110(a)(2)(C) provide for considerable flexibility in designing minor NSR programs, and it may be time to revisit the regulatory requirements for this program to give the states an appropriate level of flexibility to design a program that meets their particular air quality concerns, while assuring reasonable

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<sup>2</sup> The State did submit a SIP revision to address the requirements of the phase 2 ozone implementation rule for the State's nonattainment NSR program. As discussed above, the nonattainment NSR program is outside the scope of this infrastructure SIP action. We understand that the state has promulgated a rule that may satisfy this requirement and we will propose action on that SIP revision when it is submitted.



consistency across the country in protecting the NAAQS with respect to new and modified minor sources.

4. **Adequate resources and local and regional government:** Section 110(a)(2)(E)

requires states to provide:

(i) necessary assurances that the State... will have adequate personnel, funding, and authority under State... law to carry out the SIP (and is not prohibited by any provision of Federal or State law from carrying out [the SIP] or portion thereof)...

(iii) necessary assurances that, where the state has relied upon a local or regional government, agency, or instrumentality for the implementation of any plan provision, the state has responsibility for ensuring adequate implementation of such plan provision.

a. **Montana's response to this requirement:** According to the State's submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements, no state or federal provisions prohibit the implementation of any provision of the Montana SIP. Montana devotes adequate resources to SIP development and maintenance sufficient to ensure attainment and maintenance of the NAAQS.

The Department receives grant monies from EPA intended to fund programs to protect the NAAQS. The Department allocates a portion of the EPA grant money to fund SIP activities for attainment and maintenance of the NAAQS. In addition, Montana imposes and collects fees from permitted sources. Montana allocates a portion of the permit fee revenue to activities associated with permitting and compliance for sources of regulated air pollutants, including PM<sub>2.5</sub> emissions. Montana also receives state general funds to conduct state air quality program

activities. Montana allocates a portion of state general funding to non-permit air program activities, including SIP programs for attainment and maintenance of the NAAQS.

The Air Resources Management Bureau has 50 fulltime equivalent positions with an annual budget of \$6.3 million for fiscal year 2010. The program funding is broken down as follows: \$163,536 from state general funds, \$1,643,940 from Federal grants, and \$4,546,047 from stationary source fees.

The provisions in state law which describe adequate implementation of local or regional implementation of any plan provision are provided in MCA 75-2-112, Power and Responsibilities of Department.

The provisions in state law providing for adequate resources are contained in the MT CAA, 75-2-101 et seq., MCA. More specifically, those provisions are contained in 75-2-102, MCA, Intent – Policy and Purpose; 75-2-111, MCA, Powers of the Board and 75-2-112, MCA, Powers and Responsibilities of Department.

b. **EPA Analysis:** The provisions contained in 75–2–102, MCA, 75–2–111, MCA, and 75–2–112, MCA, provide adequate authority for the State of Montana and the DEQ to carry out its SIP obligations with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS. The State receives sections 103 and 105 grant funds through its Performance Partnership Grant along with required state matching funds to provide funding necessary to carry out Montana’s SIP requirements. EPA therefore proposes to approve the Montana infrastructure SIP with regard to the requirements of section 110(a)(2)(E)(i) and (iii) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

5. **State boards:** Section 110(a)(2)(E)(ii) requires that "the State comply with the requirements respecting State boards under section 128."

- a. **Montana’s response to this requirement:** The Montana BER adopts regulations and the Montana DEQ implements and enforces those regulations, including those of the state air program. The composition and requirements of the BER are detailed in 2-15-3502, MCA, 2-15-121, MCA, and 2-15-124, MCA. Laws related to conflict of interest in Montana state government are found in 2-2-201, MCA, and 2-2-202, MCA. None of these Montana statutes are subject to approval by the federal government.
- b. **EPA Analysis:** The Montana SIP does not contain provisions that meet the requirements of CAA section 128. Section 128 must be implemented through SIP-approved, federally enforceable provisions. In particular, subsection 128(a)(2) requires that all SIPs must contain provisions for the adequate disclosure of potential conflicts of interest. The Montana SIP does not currently contain any such provisions and is deficient with respect to the requirements of subsection 128(a)(2).

Furthermore, section 2-15-3502 of the Montana Code creates a Board of Environmental Review (“Board”). The Board consists of seven members appointed by the Governor and meeting certain statutory criteria. Under 75-2-211(10), MCA, a person who is directly and adversely affected by the Montana DEQ’s approval or denial of a permit to construct an air pollution source may (with certain exceptions) request a hearing before the Board. Similarly, under section 75-2-218(5) of the Montana Code, a person who participated in the comment period on DEQ’s issuance, renewal, amendment or modification of a title V operating permit may request a hearing before the Board. Finally, under 75-2-201(1), MCA, a person who receives an enforcement order from DEQ under Chapter 2 of Title 75, Air Quality, may request a hearing before the Board.

Based on these State statutory provisions and our discussion above of the text of section 128(a)(1), we propose to conclude that the Board falls within the terms of subsection 128(a)(1). The Board is a multi-member body that has authority to approve permits and enforcement orders under the Act. The term “permits under the Act” includes PSD, nonattainment NSR, and minor NSR permits. These are all permits required to construct a new or modified stationary source, and, under 75-2-211(1), MCA, are potentially subject to a hearing before the Board. Permits under the Act also includes title V operating permits, which, under 75-2-218(5), MCA, are potentially subject to a hearing before the Board. Similarly, enforcement orders under the Act are, under Montana Code section 75-2-201(1), potentially subject to a hearing before the Board. In short, the Board has authority to hear appeals of permits and enforcement orders under the Act.

The Board’s authority to hear appeals is “authority to approve” within the meaning of section 128, for two reasons. First, the Board’s authority falls within the plain meaning of the word “approve.” To approve means, among other things, “to give formal sanction to.” This is precisely what, for example, an order from the Board upholding a permit does: it formally sanctions the permit. Second, the contrary interpretation, that “authority to approve” does not include the Board’s authority to hear appeals, would be inconsistent with the structure and purpose of section 128. It would limit the applicability of subsection 128(a)(1) to multi-member boards that issue permits in the first instance. As the purpose of section 128 is to promote disinterested decision-making on permits and enforcement orders, it is paramount that section 128 should apply to the entity with authority to make the final decision, and not merely to the initial decision maker. In addition, due to the language “with similar powers” in subsection

128(a)(2), the contrary interpretation would lead to the illogical result that a state director who issues permits and enforcement orders that are subject to administrative appeal would fall under the disclosure requirement, but a director that was the final decision maker on permits and enforcement orders would not.

As the Board has authority to approve permits and enforcement orders under the Act, it is subject to subsection 128(a)(1). However, the Montana SIP does not currently contain any provisions to meet the requirements of subsection 128(a)(1) and is therefore deficient for this requirement.

Based on these deficiencies in the Montana SIP, we propose to disapprove Montana's infrastructure SIP for this element. We do not consider it necessary to identify any particular instances in which the Board's actual composition in practice has failed to meet the compositional requirements of subsection 128(a)(1) or in which Board members in practice have failed to meet the disclosure requirements of subsection 128(a)(2). The deficiency is in the Montana SIP itself, which simply fails to contain any provisions meeting the explicit legal requirements of these subsections. As a result, we propose to disapprove this element of the State's infrastructure SIP.

6. **Stationary source monitoring system:** Section 110(a)(2)(F) requires:

- (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources;
- (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources; and

(iii) correlation of such reports by the State agency with any emission limitations or standards established pursuant to [the Act], which reports shall be available at reasonable times for public inspection.

- a. **Montana's response to this requirement:** The State's submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite three State Rules: ARM 17.8.105 (66 FR 42427); ARM 17.8.106 (66 FR 42427); and ARM 17.8.505 (State only rule).

Montana's administrative rules authorize the Department to require monitoring of emissions from stationary sources and annual submissions of all information necessary to complete a source emissions inventory. Affected permits require emissions monitoring from stationary sources of air pollution, including PM emissions. Further, on an annual basis, the Department compiles a state emissions inventory of all regulated sources for the evaluation of compliance with applicable standards and inclusion in EPA databases.

- b. **EPA Analysis:** The provisions cited by Montana (ARM 17.8.105 and 17.8.106) pertain to testing requirements and protocols. Montana also incorporates by reference 40 CFR part 51, appendix P, regarding minimum monitoring requirements. (See ARM 17.8.103(1)(D)). In addition, Montana provides for monitoring, recordkeeping, and reporting requirements for sources subject to minor and major source permitting. EPA therefore proposes to approve Montana's infrastructure SIP with regard to the requirements of section 110(a)(2)(F) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

7. **Emergency powers:** Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

a. **Montana's response to this requirement:** The State's submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite EPA approved Montana's Emergency Episode Avoidance Plan (EEAP) in 71 FR 19, January 3, 2006. Montana's EEAP made provision for emergency control of all criteria pollutants. Under authority granted by the 75-2-402, MCA, and the Montana EEAP, the Department may order sources of pollution to limit or cease emissions. The MT CAA is not subject to approval by EPA.

b. **EPA analysis:** Section 75-2-402 of the MCA provides the Department with general emergency authority comparable to that in section 303 of the Act. EPA last approved revisions to the EEAP on January 3, 2006 (71 FR 19). The SIP therefore meets the requirements of 110(a)(2)(G) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

8. **Future SIP revisions:** Section 110(a)(2)(H) requires that SIPs provide for revision of such plan:

(i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard; and

(ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the [SIP] is substantially inadequate to attain the [NAAQS] which it implements or to otherwise comply with any additional requirements established under this [Act].

a. **Montana's response to this requirement:** The State's submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite provisions in state law providing for adoption of rules and regulations contained in the MT CAA, 75-2-101 *et seq.*, MCA. More specifically,

those provisions are contained in 75-2-102, MCA, Intent – Policy and Purpose; 75-2-111, MCA, Powers of the Board, and 75-2-112, MCA, Powers and Responsibilities of Department.

The MT CAA invests in the BER the authority to adopt, amend, and repeal rules for administering, implementing, and enforcing rules promulgated to regulate emissions of air pollutants, including rules necessary to establish measures to attain and maintain the NAAQS. The Governor submits for inclusion into the SIP rules determined to be necessary to attain and maintain the NAAQS.

b. **EPA analysis:** Montana’s statutory provisions in the Montana CAA at 75–2–101 *et seq.*, give the BER sufficient authority to meet the requirements of 110(a)(2)(H).

9. **Consultation with government officials, public notification, PSD and visibility protection:** Section 110(a)(2)(J) requires that each SIP “meet the applicable requirements of section 121 of this title (relating to consultation), section 127 of this title (relating to public notification), and part C of this subchapter (relating to [PSD] of air quality and visibility protection).”

a. **Montana’s response to this requirement:** The State’s submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite the State Implementation Plan for Columbia Falls PM<sub>10</sub> Nonattainment Area which was approved by EPA on April 14, 1994 (59 FR 17700). Montana has not changed or revoked consultation processes since that time. Montana holds public meetings and hearings on all SIP revisions in accordance with 40 CFR 51, appendix V and Montana’s open meeting laws 2-2-203, MCA.

On January 3, 2006, EPA approved Montana’s EEAP at 71 FR 19. Montana’s EEAP provides for all criteria pollutants, including PM. The EEAP contains provisions for



disseminating information regarding an exceedance of the NAAQS to appropriate news media, health officials, law enforcement, and others. The Department notice includes recommendations for actions citizens may take to reduce the impact of their activities. Montana also complies with 40 CFR 51.930 during exceptional events.

Congress directed states to develop and implement measures to prevent significant deterioration of air quality pursuant to 42 USC § 7471. Montana adopted permitting requirements for major sources proposing to modify or construct, PSD rules in subchapter 8 (60 FR 36715), and nonattainment NSR rules in subchapter 9 (60 FR 36715) and 10 (60 FR 36715) of Title 17, Chapter 8, ARM. Montana continues to implement and enforce these rules. Montana consults with Federal Land Managers as needed and/or required.

The EPA promulgated a Federal Implementation Plan (FIP), which became final on September 18, 2012 (77 FR 57864), to address regional haze requirements for the State of Montana.

b. **EPA Analysis:** The State has demonstrated that it has the authority and rules in place to provide a process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal Land Manager having authority over federal land to which the SIP applies, consistent with the requirements of CAA section 121. Furthermore, Montana's EEAP, approved into the SIP, meets the general requirements of CAA section 127.

Turning to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the Act, EPA has evaluated this requirement in the context of infrastructure element (C) in section IV.3 above. As discussed there, EPA proposes to

disapprove Montana's infrastructure SIP for the requirement in 110(a)(2)(C) that the SIP include a permit program as required in part C, on the basis that Montana's SIP-approved PSD program does not properly regulate nitrogen oxides as an ozone precursor. For the same reason, EPA proposes to disapprove Montana's infrastructure SIP with regard to the requirement in section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I the Act.

Finally, with regard to the applicable requirements for visibility protection, EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the Act. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus, we find that there is no new visibility obligation "triggered" under section 110(a)(2)(J) when a new NAAQS becomes effective.

We propose to find that the Montana SIP meets the requirements of section 110(a)(2)(J) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS with regard to sections 121 and 127 of the Act, and does not meet the requirements of section 110(a)(2)(J) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS with regard to meeting the applicable requirements of part C relating to PSD.

10. **Air quality and modeling/data:** Section 110(a)(2)(K) requires that each SIP provide for:

- (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a [NAAQS]; and
- (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

a. **Montana's response to this requirement:** The State's submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite Title 17, Chapter 8, subchapters 7 (60 FR 3615), 8 (60 FR 36715), 9 (60 FR 36715), and 10 (60 FR 36715), ARM (regulating construction of new or modified major stationary sources consistent with PSD and NSR requirements). Sources subject to these provisions shall demonstrate the facility can be expected to operate in compliance with applicable law and that it will not cause or contribute to a violation of any NAAQS.

Absent any privacy restrictions regarding the release of proprietary business information, all preconstruction data and analysis regarding the results of source predictive modeling for purposes of NAAQS compliance is public information available for anyone, including EPA, to review upon request.

b. **EPA Analysis:** Montana's SIP meets the requirements of CAA section 110(a)(2)(K) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. In particular, Montana's approved PSD program (see ARM 17.8.821(1)) requires estimates of ambient air concentrations to be based on the applicable air quality models, databases, and other requirements specified in appendix W of 40 CFR part 51, pertaining to the Guidelines on Air Quality Models. As a result, the SIP provides for such air quality modeling as the Administrator has prescribed with respect to the SIP outside of the nonattainment context.

11. **Permitting fees:** Section 110(a)(2)(L) directs SIPs to:

require the owner or operator of each major stationary source to pay to the permitting authority, as a condition of any permit required under this act, a fee sufficient to cover--

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, the reasonable costs of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action), until such fee requirement is superseded with respect to such sources by the Administrator's approval of a fee program under [title] V...

a. **Montana's response to this requirement:** The State's submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite an approved Title V permitting program. Montana requires an applicant proposing to construct or modify an air pollution source to pay an application fee, ARM 17.8.504 (State rule only). Sources must also pay an annual operation fee, ARM 17.8.505 (State rule only).

b. **EPA Analysis:** Montana's approved title V operating permit program meets the requirements of CAA section 110(a)(2)(L) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS. As discussed in the Direct Final Rule approving the State's title V program (65 FR 37049, June 13, 2000), the State demonstrated that the fees collected were sufficient to administer the program.

12. **Consultation/participation by affected local entities:** Section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

a. **Montana's response to this requirement:** The State's submissions for the 1997 and 2006 PM<sub>2.5</sub> infrastructure requirements cite Section 75-2-112(2)(j) of the MT CAA which requires the Department to "... advise, consult, contract, and cooperate with other agencies of the

state, local governments, industries, other states, interstate and interlocal agencies, the United States, and any interested persons or groups;...”

As a matter of practice, the Department consults with the local agencies when necessary to implement a control plan for a nonattainment area. The Department also meets with county/local air pollution control program staff and discusses monitoring issues, including monitoring for PM<sub>2.5</sub>, prior to making decisions regarding monitoring needs, monitor type, locations, and monitoring schedules.

Parties affected by Department actions, including local political subdivisions, may petition the BER for a hearing and address of their grievances, see ARM 17.8.140 (66 FR 42427), 17.8.141 (66 FR 42427), and 17.8.142 (66 FR 42427).

b. **EPA Analysis:** Montana’s submittal meets the requirements of CAA section 110(a)(2)(M) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

## **VI. What Action is EPA Taking?**

In this action, EPA is proposing to approve the following infrastructure elements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS: (A), (C) with respect to the requirement to have a minor NSR program that addresses PM<sub>2.5</sub>; (E)(i), (E)(iii), (F), (G), (H), (J) with respect to the requirements of sections 121 and 127, (K), (L), and (M). EPA is proposing to disapprove the following infrastructure elements for the 1997 and 2006 PM<sub>2.5</sub> NAAQS: (E)(ii) concerning requirements for state boards under section 128; and elements (C) and (J) with respect to the requirement to have a PSD program that meets the requirements of part C of Title I of the Act. Finally, in this action, EPA is taking no action on infrastructure element (D) for the 1997 and 2006 PM<sub>2.5</sub> NAAQS as that element will be acted on separately.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves some state law as meeting federal requirements and disapproves other state law because it does not meet federal requirements; this proposed action does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 USC 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 USC 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999); is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 USC 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 2, 2013

Howard M. Cantor  
Acting Regional Administrator  
Region 8